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OFFICE OF THE ATTORNEY GENERAL

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LITIGATION BUREAU

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September 19, 2024

**BY ECF**

Hon. Andrew L. Carter, Jr.  
United States District Court for the Southern District of New York  
40 Foley Square, New York, New York 10007  
ALCarterNYSDChambers@nysd.uscourts.gov

RE: *Team Kennedy, et al. v. Berger, et al.*, No. 24-cv-03897-ALC (S.D.N.Y.)

Dear Judge Carter:

This Office represents defendants Henry T. Berger and Peter S. Kosinski, in their official capacities as Co-Chairs of the New York State Board of Elections (the “Board”); Essma Bagnuola and Anthony J. Casale, in their official capacities as Commissioners of the Board; Kristen Zebrowski Stavisky and Raymond J. Riley, III, in their official capacities as Co-Executive Directors of the Board; and Letitia James, in her official capacity as the Attorney General of the State of New York (together, “Defendants”), in the above-referenced action.

We write concerning Plaintiffs’ motion for leave to amend the First Amended Complaint (“FAC”) and file the proposed Second Amended Complaint (“SAC”). ECF No. 70-72. Defendants take no position on Plaintiffs’ motion.<sup>1</sup>

Defendants are due to answer or otherwise respond to the FAC by October 11, 2024. *See* ECF No. 62, 74. Defendants request that if Plaintiffs’ motion for leave to amend is granted, the Court set the deadline for Defendants to answer or otherwise respond to the SAC as either October 11, 2024, or 21 days after the motion for leave to amend is decided, whichever is later. Defendants’ request should be granted because it will not impact Plaintiffs’ attempts to obtain preliminary relief ahead of the November 2024 election, as they have already been denied by this Court (ECF No. 39, 74), and the deadline to answer or otherwise respond to the SAC will not affect Plaintiffs’ appeal of the denial of their motion for a preliminary injunction.

Thank you for Your Honor’s consideration of this matter.

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<sup>1</sup> Defendants stated in the September 9, 2024 Status Report that: “At this time, Defendants intend to oppose the proposed motion for leave to amend the First Amended Complaint and have not received any proposed Second Amended Complaint.” ECF No. 67. Defendants have since received the SAC. Although Defendants take no position on Plaintiffs’ motion for leave to amend, Defendants reserve the right to, *inter alia*, move to dismiss the SAC and oppose any motion by Plaintiffs for class certification.

Hon. Andrew L. Carter, Jr., U.S.D.J.  
September 19, 2024

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Respectfully submitted,

/s/ Erin R. McAlister  
Erin R. McAlister  
Assistant Attorney General

cc: All Counsel of Record (By ECF)